IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 125 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME-TAX

Versus

INSUCOW TRANSMISSION IND.

Appearance:

1. INCOME TAX REFERENCE No. 125 of 1989

MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 29/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question has been referred to this court for its opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing the depreciation and investment allowance on the W.D.V. of the machines without deducting therefrom the amount of cash subsidy received?"

2. Learned Sr. Central Government Standing Counsel Shri M.R. Bhatt has appeared for the applicant-revenue, whereas nobody has appeared for the respondent, though served.

3. It has been submitted by Shri Bhatt, Sr. Standing Counsel, that filing of the paper-book be dispensed with as the question, which has been referred to this court, has been squarely covered by the judgment delivered by the Hon'ble Supreme Court in the case of CIT v. P.J. Chemicals Ltd., 210 ITR 830. Looking to the said fact, filing of the paper-book is dispensed with.

4. Learned Standing Counsel Shri Bhatt has fairly submitted that the question, which has been referred to this court, has been squarely covered by the judgment delivered by the Hon'ble Supreme Court in the case of CIT v. P.J. Chemicals Ltd. (supra). Looking to the law laid down by the Supreme Court in the case of CIT v. P.J. Chemicals (supra), the amount of cash subsidy received by the respondent assessee could not have been deducted from the value of the machines while allowing the amount of depreciation and investment allowance on the written down value of the machine.

5. In the circumstances, we answer the question in the affirmative, that is, in favour of the assessee and against the revenue.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

(hn)